IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 2745 OF 1994

Smt. Shakuntalabai Deoram Thange,
Occupation-Household, Residing at
House No. 115, Ward No.4, Daund,
Taluka Daund, Dist.Pune. ..Petitioner Tenant,Orig-Defendnat.

V/s

Shri Shaikh Mukhatyar Istaq,
Occupation-Business, Residing
at Gandhi Chowk, Daund,
Taluka Daund, District Pune. ..Respondent, Landlord-Orig-Plaintiff.

Mr. V.S. Gokhale for the petitioner.
Mr. P.K. Husingh for the respondent.

CORAM : ANOOP V.MOHTA J.
DATE : 9TH AUGUST, 2005.

ORAL JUDGMENT

. The petitioner-tenant has challenged the judgment and order dated 23/6/1993, passed by the Additional District Judge, Baramati (Appellate Court), whereby, the suit of respondent-landlord for recovery of possession on the ground of reasonable and bonafide need has been decreed.

2. Heard the learned Counsel, Mr. Gokhale, appearing for the petitioner and Mr. Husingh, the learned Counsel, appearing for the respondent. The

tenancy is in respect of one room situated on the ground floor of House No. 155, Ward No.4, Daund, District Pune. After purchasing the property on 3/12/1984, the respondent-landlord filed suit for eviction in the year 1986, in the Court of Civil Judge, J.D. Daund, Pune, (trial Court),basically, on the ground of default and bonafide need. Parties led evidence. The trial Court after considering the material on the record dismissed the suit. The appellate Court further, on the basis of the same evidence, have appreciated the rival contentions, as well as, material on the record, granted the decree for possession. The learned Counsel appearing for the petitioner, apart from it submitted, that the petitioner tenant is aged person and therefore, greater-hardship would be caused, if she is evicted from the premises. To this, the learned Counsel, appearing for the respondent, referred the reasoning given by the appellate Court that is para 12;

> On the point of greater hardship, the learned trial Court held that if the defendant is evicted from the suit premises, she would come on the street.It is pertinent to note that if this only consideration is to weigh with the Court, while considering the suit of the landlord udner section 13(1) (g) of the Act, then, in that event, it would not be possible to pass any decree, as, always the tenant would come on the street. The balance is required to be struck between the right of the landlord and

> the tenant. It is pertinent to note that the defendant alone, with no liability, except to maintain herself."

3. It is true that once the case of bonafide need is made out and or considered by the Court, the landlord is entitled to claim the possession of the property being a owner of the same. If the landlord wants the premises for his occupation and if able to demonstrate the need, then there is no choice but to respect the legislation, as well as, need of the landlord. In the present case, the appellate Court after considering the case and the evidence rightly observed as under;

> "There is no denial to the fact that the plaintiff was residing in Vazeer Building. At present, his parents are putting up there. The plaintiff deposed on oath that there are eight members in his family. His wife and three childrens, who are aged 6,5, and 2 years respectively. Even if the family of the plaintiff is restricted to his wife and the childrens, who must, by this time, he quite grown up, the premises of three rooms would be hardly sufficient to cater to their needs. Further, he deposed that he has younger brother, who also resides with them. he is of marriageable age. His parents are putting up in the rented room. the defendant, in her cross-examination, admitted that the plaintiff's father is old and is suffering from blood pressure and Asthama. She also admits that the brother of the plaintiff works with the plaintiff in the motor garage. Thus, the facts, which emerged are that the plaintiff has no other premises of his own, except the suit premises. The rented premises is being occupied

> by his parents and his anxiety to bring his parents with him appears genuine. His brother also works with him. The defendant further admitted in her cross-examination that the plaintiff has his wife and three children, who reside in the suit premises."

The above observation further supports the landlord, that his parents are living in the rented premises. His parents are old and father is suffering from blood pressure and Asthama. The respondent landlord had no other premises of his own except the suit premises. Therefore, the anxiety of the landlord to bring his old parents with him appears to be genuine and cannot be said to be dishonest. The undisputed position that the parents are living in rented premises, further supports the landlord’s case.

4. The financial condition of the landlord even if better than the tenant still, in view of the above facts and circumstances, on that ground itself it is difficult to discard the bonafide need as made out by the landlord.

5. The issue of comparative hardship in such cases and specially in the case where the petitioner is old

lady, can be compensated by granting a more time to vacate the premises. It appears from the record itself that the appellate Court by order dated 23/6/1993 granted one year to search for alternative accommodation. The fact that the present petition has been pending in this Court since 1994, and the stay is in operation since then, also cannot be overlooked.

6. However, considering the submissions made by the learned Counsel appearing for the petitioner and the age of the petitioner, I am inclined to grant time for one year to vacate the premises.

7. The view taken by the appellate Court as referred above, is within the frame work of the law, as well as, the record. There is no case made out to interfere.

8. Resultantly, the petition is dismissed with no order as to cost. Rule discharged. Interim stay as granted is vacated. However, one year time is granted to vacate the premises on filing usual undertaking by the petitioner and/or any other adult members, if any within a period of 4 weeks and not to crate any third

party interest. The breach of any conditions shall disentitle the petitioner for time, granted by this order.

[ANOOP V. MOHTA, J.]